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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSÉ DIVISION

CAROLYN H. FRIIS,

Judgment Creditor,

v.

CITY OF SAN JOSÉ,

Judgment Debtor.

Case No.: CV 08-80027 MISC RMW/RS

**NOTICE OF MOTION, MOTION, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO VACATE, STRIKE AND SEAL
PURPORTED "FOREIGN AND
APOSTILLED JUDGMENTS"**

Hearing Date: September 19, 2008
Time: 9:00 a.m.
Courtroom: 6
Judge: Hon. Ronald M. Whyte

I. NOTICE OF MOTION

TO: EACH PARTY AND ATTORNEY OF RECORD FOR EACH PARTY:

PLEASE TAKE NOTICE that, on the 19th day of September, 2008, at 9:00 a.m., before the Honorable Ronald M. Whyte, Judge of the U.S. District Court, Judgment Debtor City of San José will move the Court for an order vacating, striking and sealing the purported "Foreign and Apostilled Judgments".

This motion is based upon this notice and the supporting memorandum of points and authorities along with the Declarations of James Young, Colleen Winchester, and

1 void and a protective order sealing them.

2 This case arises out of an ongoing dispute between FRIIS and the City regarding
3 the condition of FRIIS'¹ property located at 1752 Guadalupe Avenue, San Jose, California
4 ("Property"). For several years, the City has sought FRIIS' compliance with the San José
5 Municipal Code for violations on the Property. On November 2, 2007, after the failure of
6 several years of informal negotiation and action by the Appeals Hearing Board, the City
7 sought and obtained an Inspection Warrant from the Santa Clara County Superior Court.
8 See, Declaration of James Young in Application for Inspection Warrant and Inspection
9 Warrant; Declaration of James Young in Support of Motion ("Young Motion Dec.", Exhibits
10 "A" and "B", respectively). On November 14, 2007, after Code Enforcement officers
11 inspected the Property under the warrant, FRIIS was issued an administrative citation.
12 Young Motion Dec. ¶3, Exhibit "C".

13 In its continued effort to gain voluntary compliance, the City worked with FRIIS and
14 entered into a settlement by which the administrative citation would be dismissed in
15 exchange for FRIIS bringing the Property up to code. Young Motion Dec. ¶4, Ex. D.
16 Rather than comply with the agreement, FRIIS apparently created her own hearing
17 procedure. She wrote "I DO NOT ACCEPT THIS OFFER" and "I DO NOT CONSENT TO
18 THIS PROCEEDING" across the face of the citation, and the City's letter documenting the
19 settlement. Young Motion Dec. ¶5, Exhibit "E". In a letter dated February 8, 2008, FRIIS
20 alleges that on November 14, 2007, "armed impersonators" had "trespassed on her
21 property" without cause and without a warrant. Young Motion Dec. ¶5, Exhibit "E" at p. 1.
22 FRIIS demanded "evidentiary proof to the contrary within five days." *Id.* If the City failed
23 to rebut her allegations "in like form" the City agrees with the content of the documents. *Id.*
24 In the accompanying "affidavit", FRIIS declares that the administration citation is a
25 "counterfeited security which is null and void ab initio." *Id.* at p. 2. She further declares
26
27

28 ¹ The legal owner of the Property is the Guadalupe Acres Trust, Carolyn H. Friis as trustee.

1 that she has no information that various facts are not true,² including proclamations that
2 “Silence is not equated to agreement and acceptance” and “affiant is not empowered to
3 make a claim upon the official bond/s or insurance of the City of San José and it’s (sic)
4 employees in the amount of \$1,000,000.00 each.” *Id.* at p. 3.

5 When the City failed to respond to FRIIS’ own legal procedure, she apparently
6 declare the City’s default, and had a San Mateo County notary issue the Decrees, entitled
7 “Foreign Judgment” and “Apostilled Judgment.” Winchester Dec. ¶¶, Exhibits “A”, and “B”,
8 respectively. The Decrees were filed in this Court on March 6, 2008, and March 10, 2008.
9 They state that they are “the result of Private Administrative Proceedings and/or Alternate
10 Dispute Resolution.” *Id.* The Decrees further declare that FRIIS is empowered to make
11 claim upon the “official bond or insurance of the City of San José” in the amount of eight
12 million dollars (\$8,000,000.00). *Id.* The Decrees further claim that “[s]aid Foreign
13 Judgment is established under Notary Court Seal.” *Id.*

14 On or about June 25, 2008, the City Code Enforcement inspectors again went out to
15 the Property. At that time, it appeared the Property continued to be in violation of the San
16 José Municipal Code. Young Motion Dec. ¶¶6. After the inspection, the City received
17 another letter from FRIIS. FRIIS made various assertions including that the June 25,
18 2008, visit to the Property was in violation of the “Judgment of March 5, 2008.” Young
19 Motion Dec. ¶¶7, Exhibit F. FRIIS further questions the City if it has “any evidence that the
20 Judgment of March 5, 2008 is not a valid Judgment against the City of San José
21 (hereinafter, “the City”) and it’s (sic) agents which prohibits acts of harassment and
22 invasion of privacy and provides penalty for such actions?” *Id.* FRIIS further now claims
23 the City owes her more than twelve million (\$12,000,000.00) and requests information on
24 the City’s “bond.” *Id.*

25 Although a cursory review of the Decrees reveals that they are nonsense, the fact
26 that they are filed with this Court provide them with an aura of credibility, which is not
27 justified here. FRIIS’ recent assertion that the Decrees are binding and enforceable
28

² The double negative is misleading.

1 demonstrates the Court's need to address the validity of the filings. The City respectfully
2 requests that they be "vacated", stricken and otherwise sealed so that they cannot be
3 mistaken for having any validity.

4 **C. ARGUMENT**

5 **1. An Order To Vacate Is Appropriate Because FRIIS' Filings Are**
6 **Void.**

7 Federal Rules of Civil Procedure, rule 60, permits a party to obtain relief from entry
8 of judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable
9 neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the
10 judgment has been satisfied, released or discharged, or a prior judgment upon which it is
11 based has been reversed or otherwise vacated, or it is no longer equitable that the
12 judgment should have prospective application; or (6) any other reason justifying relief from
13 the operation of the judgment. The motion for relief must be made within a reasonable
14 time and no more than a year after the entry of the judgment or order or the date of the
15 proceeding. Fed. R. Civ. P. 60. "A final judgment is void for purposes of Rule 60(b)(4)
16 [when] the court that considered it lacked jurisdiction, either as to the subject matter of the
17 dispute or over the parties to be bound, or acted in a manner inconsistent with due process
18 of law." *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) (internal
19 quotations omitted).

20 In this case, the judgments were not entered by any court of law or administrative
21 tribunal. See, Winchester Dec. ¶¶ 4 – 6. Even arguing the Decrees are "void" seems to
22 provide them with more credibility than that to which they are entitled. The Decrees are
23 not issued by any court, administrative body, or other official body. Rather, these are
24 unilateral actions by a person who was unhappy with the City's code enforcement process.
25 In the code enforcement proceedings, the City obtained an inspection warrant from the
26 Santa Clara County Superior Court. That Court would have the jurisdiction to declare its
27 warrant "void", not FRIIS and a San Mateo Notary Public. The City respectfully requests
28 that this Court declare both Decrees (the "Foreign Judgment" filed March 6, 2008 and the

1 “Apostilled Judgment” filed March 10, 2008, and supporting documents) void and vacate
2 them.

3 **2. A Protective Order Is Appropriate Because Defendant’s Filings**
4 **Can Negatively Affect The City’s Bond Rating.**

5 The City further requests a protective order prohibiting access to the Decrees.
6 Under Federal Rules of Civil Procedure, rule 5, the court for good cause may limit or
7 prohibit a nonparty’s remote electronic access to a document filed with the court. While
8 neither the public nor the press has a First Amendment or common law right to inspect
9 documents, the Federal Rules of Civil Procedure, rules 5, and 26(c) create a presumptive
10 right of access. *D’Ambrosio v. Concord*, 17 Fed.R.Serv.3d 107 (N.D.Cal. 1990). The good
11 cause requirement has been defined as a “compelling reason ... for denying access to the
12 proceedings.” *American Telephone and Telegraph Co. v. Grady*, 594 F.2d 594, 596-97
13 (7th Cir. 1978).

14 The City’s bond rating may be negatively affected by FRIIS’ unilateral Decrees.
15 *See What Standard of Care Should Govern the World’s Shortest Editorials?: An Analysis*
16 *of Bond Rating Agency Liability*, 75 Cornell L.Rev. 411, 412 (1990) (discussing the impact
17 of bond ratings). Bond ratings are a critical component of the City’s ability to raise revenue.
18 A low bond rating will raise costs for the City. FRIIS’ unilateral Decrees could adversely
19 impact the City’s bond. Even a false communication about the City’s debts may impact the
20 City’s ratings. *See, for example, Jefferson County School Dist. No. R-1 v. Moody’s*
21 *Investor’s Services, Inc.*, 175 F.3d 848 (Colo.,1999) [Inaccurate publication about school
22 district’s bond rating caused rating to *actually* drop.] Even so, the City should not be
23 forced to “explain” the unilateral Decrees. For these compelling reasons the City requests
24 the Decrees be sealed, placed under protective order, and not listed in this Court’s index.

25 **D. CONCLUSION**

26 The Decrees are nonsense, but can be the source of mischief. The City respectfully
27 requests that this Court issue an order vacating and striking the purported “Judgment” and
28 “Apostilled Judgment” and seal them so that their existence will not wreak potential havoc

1 on the City's bond ratings.

2 Respectfully submitted,

3 RICHARD DOYLE, City Attorney

4 Dated: August 12, 2008

5 By:

6 /s/

7 COLLEEN WINCHESTER
8 Sr. Deputy City Attorney